

***NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 02-301-17
JANUARY 20, 1996***

***Protected Resources Management
MOAs/MOUs/COOPERATIVE AGREEMENTS/
INTER-AGENCY COOPERATIVE POLICIES***

***MOA B/W THE US NAVY, US COAST GUARD, US ARMY CORPS OF ENGINEERS
AND NMFS FOR THE CONSERVATION OF THE NORTHERN RIGHT WHALE***

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SUMMARY OF REVISIONS:

Signed _____
[Approving Authority name] Date
[Approving Authority title]

1/20/96

MEMORANDUM OF AGREEMENT

between the

UNITED STATES NAVY

UNITED STATES COAST GUARD

UNITED STATES ARMY CORPS OF ENGINEERS

and the

UNITED STATES DEPARTMENT OF COMMERCE

NATIONAL MARINE FISHERIES SERVICE

for the

CONSERVATION OF THE NORTHERN RIGHT WHALE

I. PURPOSE AND SCOPE

This Memorandum of Agreement (MOA) is made and entered into by and between the U.S. Navy, hereinafter referred to as Navy; the U. S. Coast Guard, hereinafter referred to as USCG; the U.S. Army Corps of Engineers, hereinafter referred to as COE; and the U. S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, hereinafter referred to as NMFS. Collectively, the parties to this MOA will be: referred to as the cooperators.

The purpose of this MOA is to establish a general framework for cooperation and participation among the cooperators in the conservation of the highly endangered northern right whale, *Eubalaena glacialis*, in its calving grounds along the Georgia and Florida coasts of the United States.

The: cooperators propose to work together to achieve a common goal of preventing ship collisions with right whales within the southeastern U.S. calving grounds, assessing the status of the stock, and gaining other information to help better protect and recover the species.

II. REFERENCES AND AUTHORITIES

The cooperators enter into this agreement pursuant to the Endangered Species Act (16 U.S. C. 1536(a)(1)) which requires that all Federal agencies use: their authorities to further interagency cooperation by carrying out programs for the conservation of endangered species and threatened species pursuant to 16 U.S.C. 1533.

In addition, Federal agencies are to ensure that any action authorized, funded, or carried out by such agencies will not jeopardize the continued existence of any endangered species or threatened species (16 U.S.C. 1536(a)(2)).

The northern right whale, *Eubalaena glacialis*, is listed as endangered pursuant to the Endangered Species Act (16 U.S.C. 1533).

The southeastern U.S. calving grounds of the northern right whale, *Eubalaena glacialis*, have been designated as part of the species' critical habitat (50 CFR Section 226.13”).

The Economy Act. (3 1 U. S.C. 1535) provides that funds may be transferred to the National Oceanic and Atmospheric Administration (NOAA) by the other cooperators in this agreement if it is determined that this is in the best interest of the United States Government.

III. SUBSTANCE

The NMFS is responsible for the management and protection of marine mammals and endangered marine species. The cooperators may be required to conduct; activities within the southeastern U.S. calving grounds of the northern right whale. Due to its highly endangered status, any human-related mortality of this species, is of grave concern. The cooperators desire to ensure, inasmuch as is practicable, that right whale/vessel interactions in the southeastern critical habitat are averted. In the past, this; has been accomplished through implementation of what has become known as the right whale early warning system (EWS). This system attempts daily (weather, funding, etc., permitting) aerial surveillance of the southeastern right whale critical habitat during the calving season. When right whales are sighted, the locations are reported to local port authorities, any nearby vessels (including COE dredges), and to the USCG for transmission over NAVTEX (a broadcast system which transmits notices to mariners over receiving devices present on

most large vessels). This system has been effective in averting collisions between vessels and right whales.

Responsibilities of the Cooperators

1. The cooperators should support the conservation of northern right whales through active participation in the Recovery Plan Implementation Team for the Northern Right Whale:.
2. The cooperators should participate in the EWS, unless and until such time as the cooperators agree such participation is no longer necessary.
3. Specific work projects or activities that involve the transfer of funds, services, or property among the cooperators to this MOA will require the (execution of separate agreements or contracts, or addenda to this agreement, contingent upon the availability of funds as appropriated by Congress. Each subsequent agreement or arrangement involving the transfer of funds, services, or property among the parties to this MOA must comply with all applicable statutes and regulations, including those statutes and regulations applicable to procurement activities.
4. This MOA in no way restricts the cooperators from participating in similar activities or arrangements with other public: or private agencies, organizations, or individuals.
5. Nothing in this MOA shall obligate the cooperators to expend appropriations or to enter into any contract or other obligations.
6. This MOA may be modified or amended upon written request of any party hereto and the subsequent written concurrence of all the parties. Cooperator participation in this MOA may be terminated with a 60-day written notice of any party to the other cooperators, Unless tenminated under the terms of this paragraph, this MOA will remain in full force and in effect until September 30, 1996. This agreement may then be renewed annually upon written consent of all participating agencies.

IV. PRINCIPAL CONTACTS

The following persons will be the principal contacts for their respective agencies at the time of execution of this MOA. These contacts may be changed at the agencies' discretion upon notice to the other cooperating agencies.

LCDR Wesley Marquardt
Commandant (G-NIO)
U.S. Coast Guard
2100 2nd Street, S.W.
Washington, DC 20593

Mr. Rudy Nyc
Planning Directorate, CESAD PD-R
South Atlantic Division
U. S. Army Corps of Engineers
77 Forsythe Street, S.W.
Atlanta, GA 30335-6801

Mr. Joseph Wallmeyer
COMNAVBASE Jacksonville
Code N 3 - Box 102
Jacksonville, FL 32212-0102

Dr. Katherine Wang
'Protected Species Management Division
NMFS, Southeast Region& Office
9721 Executive Center Dr. N .
St. Petersburg, FL 33702

V. OTHER PROVISIONS

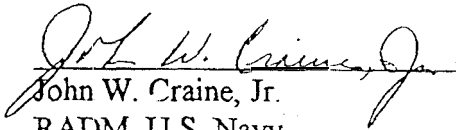
Nothing herein is intended to conflict with current NOAA, Navy, USCG, or COE directives. If the terms of this agreement are inconsistent with existing directives of either of the parties entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished by either an amendment or by entering into a new agreement, whichever is deemed most expedient to the interest of both parties.

Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days,

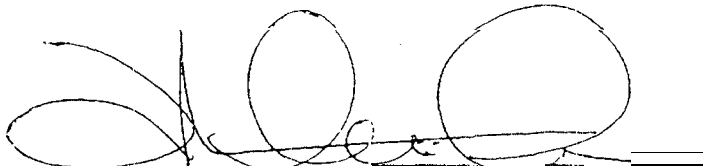
the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

VI. SIGNATURE OF EACH PARTY

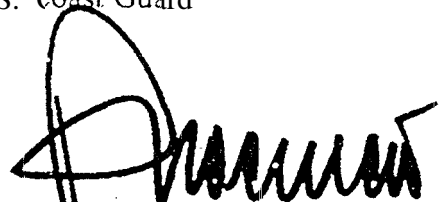
IN WITNESS WHEREOF, the parties hereto have executed this MOA. as of the last written date below.


John W. Craine, Jr.
RADM, U.S. Navy
Commander in Chief
U.S. Atlantic Fleet
Director, Shore Activities Readiness

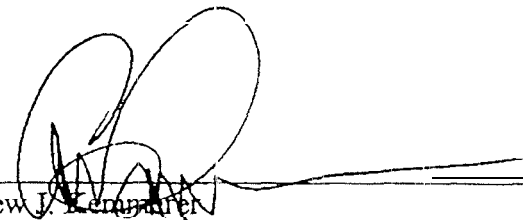
12/11/95
Date


Captain J. A. Creech, Commandant (G--ND)
Chairman, Endangered Species Act Compliance Team
U.S. Coast Guard

19 Dec 1995
Date


Ralph W. Locurcio
Brigadier General, U.S. Army
Division Engineer, South Atlantic

9 Jan 96
Date


Andrew J. Lemm
Director, Southeast Regional Office
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

20 Jan 96
Date

ADDENDUM 1

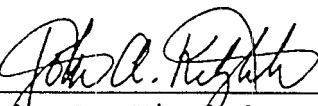
FUNDING OF THE RIGHT WHALE EWS IN FY96

The above listed parties have agreed that continuation of the EWS is one possible vehicle to avoid vessel/right whale collisions in the southeastern calving grounds in FY96. Pursuant to this objective, the Navy, USCG, and COE have each agreed to contribute \$80,000, for a total of \$240,000, to be awarded as a contract for implementation of the EWS. The funds will be transferred to NMFS through separate agreements and not under this MOA. Funds dedicated by the Navy, USCG, and COE for the right whale EWS will be transferred by NMFS to the contractor, once the required services have been rendered. NMFS has dedicated personnel for the administration of this contract, and will provide the states of Georgia and Florida with \$35 K each for recovery plan implementation activities in support of this agreement.

Section 12. Amendments and Termination.

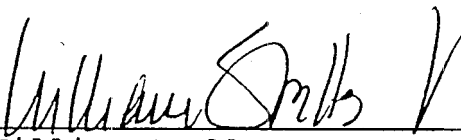
This MOA may be amended by either party upon consent, in writing, of both parties to this MOA. This agreement shall remain in force and effect until termination by the NMFS of Oregon. Such termination shall be effective upon 30 days' notice in writing. **The** NMFS will annually notify Oregon whether it has sufficient funding to participate in this agreement. The NMFS' obligations under the agreement shall be subject to the availability of appropriated funds.

This MOA has been executed by and on behalf of the parties hereto as of-the date last signed below:



John A. Kitzhaber, M.D.
Governor of Oregon

22 April 1997
Date



William Stelle, Jr.
Regional Administrator,
Northwest Region, NMFS

28 April 1997
Date